

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before The Trademark Trial and Appeal Board

Pucel Enterprises, Inc.  
1440 E. 36th Street  
Cleveland, OH 44114

Opposer-Petitioner

CONSOLIDATED CASE

v.

Grizzly Industrial, Inc.  
1821 Valencia Street  
Bellingham, WA 98226

Opposition No. 123,506  
Cancellation No. 31,984  
Cancellation No. 32,024  
Cancellation No. 32,025

Applicant-Registrant

EV374958945US

OPPOSER'S/PETITIONER'S (PUCEL ENTERPRISES, INC.) NOTICE OF  
RELIANCE UNDER THE RULES AND BY AGREEMENT OF THE PARTIES

**ALL DOCUMENTS SUBMITTED CONFIDENTIALLY PURSUANT TO  
PROTECTIVE ORDER**

Opposer/Petitioner hereby submits its Notice of Reliance and files with the  
Trademark Trial and Appeal Board the following documents:

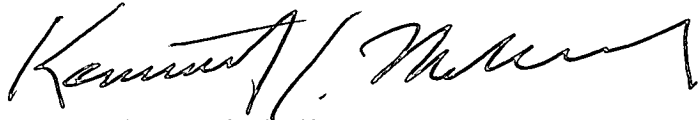
1. Applicant's/Respondent's Response to Interrogatories in Case No.  
123,506 served June 28, 2002.

Opposer/Petitioner Pucel Enterprises submits the interrogatories because  
they bear upon the issue of likelihood of confusion in regard to Pucel's trademarks  
GRIZZLY and the GRIZZLY BEAR SYMBOL set forth in United States



trademark registration nos. 704,529; 704,589; 624,055; 704,530; 704,588; and 704,631.

Respectfully submitted,



Kenneth L. Mitchell  
Woodling Krost and Rust  
9213 Chillicothe Road  
Kirtland, Ohio 44094  
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Counsel for Opposer/Petitioner

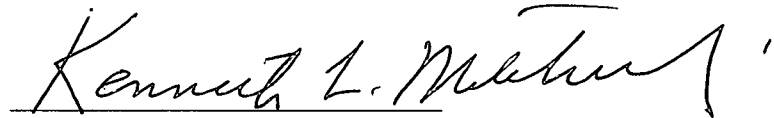
#### CERTIFICATE OF MAILING

I hereby certify that the foregoing OPPOSER'S/PETITIONER'S (PUCEL ENTERPRISES, INC.) NOTICE OF RELIANCE UNDER THE RULES AND BY AGREEMENT OF THE PARTIES and documents identified therein along with a return receipt postcard were mailed to the USPTO, TTAB, P. O. Box 1451, Alexandria Virginia 22313-1451 Express Mail Post Office to Addressee <sup>EV374958945</sup> US this 1ST day of June, 2006.

  
Kenneth L. Mitchell

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSER'S/PETITIONER'S  
(PUCEL ENTERPRISES, INC.) NOTICE OF RELIANCE UNDER THE RULES  
AND BY AGREEMENT OF THE PARTIES (without documents) was faxed to  
Joseph Schmidt, Esq. attorney for Applicant/Respondent at 312 222-0818 this 1st day of  
June, 2006.

A handwritten signature in cursive script, reading "Kenneth L. Mitchell", is written over a horizontal line.

Kenneth L. Mitchell

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

PUCEL ENTERPRISES, INC.  
Petitioner,

CONSOLIDATED

v.

GRIZZLY INDUSTRIAL, INC.  
Respondent.

Opposition No. 123,506	Mark: GRIZZLY.COM
Cancellation No. 31,984	Mark: GRIZZLY
Cancellation No. 32,024	Mark: GRIZZLY
Cancellation No. 32,025	Mark: GRIZZLY INDUSTRIAL

**GRIZZLY INDUSTRIAL INC.'S RESPONSE TO  
OPPOSER'S (PUCEL ENTERPRISES, INC.)  
FIRST SET OF INTERROGATORIES  
(Opposition No. 123,506)**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Grizzly Industrial, Inc. (Grizzly) responds as follows:

1. Identify all documents which show or illustrate all sales by Applicant of the services and goods referred to in U.S. Service Mark Application S.N. 76/088,346 filed July 10, 2000 on or before June 30, 1999 and which used or were associated with the alleged trademark GRIZZLY.COM.

**RESPONSE:** Grizzly objects to this Interrogatory as it is overly broad and unduly burdensome and seeks information relating to the identity of customers and sales in other than round numbers, which are not discoverable under the TTAB Rules. TBMP 419(3) and (18).

2. Identify all documents which show or illustrate all sales by Applicant of the services and goods referred to in U.S. Service Mark Application S.N. 76/088,346 filed July 10, 2000 subsequent to June 30, 1999 and which used or were associated with the alleged trademark GRIZZLY.COM.

**RESPONSE:** Grizzly objects to this Interrogatory as it is overly broad and unduly burdensome and seeks information relating to the identity of customers and sales in other than round numbers which are not discoverable under the TTAB Rules. TBMP 419(3) and (18).

3. Identify all documents showing or illustrating the use by Applicant of the alleged mark GRIZZLY.COM on or in connection with services and goods referred to in U.S. Service Mark Application S.N. 76/088,346 filed July 10, 2000.

**RESPONSE:** In lieu of identifying documents, Grizzly states that it has already produced thousands of documents responsive to this interrogatory, including documents bearing Bates Nos. GRIZC-00177-07937, and is producing a print-out of its website, GRIZC 09120-09157.

4. Identify all documents illustrating or showing all of the advertising by Applicant of the alleged trademark GRIZZLY.COM on or in connection with the services and goods referred to in U.S. Service Mark Application S.N. 76/088,346 filed July 10, 2000.

**RESPONSE:** In lieu of identifying documents, Grizzly states that it has already produced thousands of documents responsive to this interrogatory, including documents bearing Bates Nos. GRIZC-00177-07937, and is producing a print-out of its website, GRIZC 09120-09157.

5. Identify all documents illustrating or showing published articles by Applicant in which the alleged trademark GRIZZLY.COM is mentioned or used on or in connection with the services and goods referred to in U.S. Service Mark Application S.N. 76/088,346 filed July 10, 2000.

**RESPONSE:** In lieu of identifying documents, Grizzly states that it has already produced thousands of documents responsive to this interrogatory, including documents bearing Bates Nos. GRIZC-00177-07937, and is producing a print-out of its website, GRIZC 09120-09157.

6. Identify all contracts (written or oral) between Applicant and any other person or entity which relate to the alleged mark GRIZZLY.COM and goods in connection with which the alleged mark is used including but not limited to all licenses of the alleged mark GRIZZLY.COM referred to in the opposition and/or answer in this proceeding as being used by Applicant.

**RESPONSE:** In lieu of identifying such contracts, Grizzly will produce the contract.

7. Identify all documents that illustrate actual confusion by members of the purchasing public between the marks involved in the present proceeding as applied to their respective goods.

**RESPONSE:** Grizzly is not presently aware of any such documents.

8. Identify all officers of Applicant and describe his or her duties.

**RESPONSE:** Mr. Shiraz Balolia, President.

9. Identify the person who is in charge of the sales on behalf of Applicant of the services and goods referred to in U.S. Service Mark Application S.N. 76/088,346 filed July 10, 2000.

**RESPONSE:** Mr. Shiraz Balolia.

10. Identify the person who is in charge of the marketing on behalf of Applicant of the services and goods referred to in U.S. Service Mark Application S.N. 76/088,346 filed July 10, 2000.

**RESPONSE:** Mr. Shiraz Balolia.

11. Identify the person who is in charge of the production on behalf of Applicant of the services and goods referred to in U.S. Service Mark Application S.N. 76/088,346 filed July 10, 2000.

**RESPONSE:** Grizzly objects to this request as seeking information not relevant to any claim or defense of any party to the proceeding. Nonetheless, and without waiving this objection, Grizzly answers: Mr. Shiraz Balolia.

12. Identify the person who is in charge of the engineering on behalf of Applicant of the services and goods referred to in U.S. Service Mark Application S.N. 76/088,346 filed July 10, 2000.

**RESPONSE:** Grizzly objects to this request as seeking information not relevant to any claim or defense of any party to the proceeding. Nonetheless, and without waiving this objection, Grizzly answers: Mr. Shiraz Balolia.

13. Identify all plates, labels, or other markings which identify or illustrate or show the use or application or association of the alleged trademark GRIZZLY.COM on or with the services and goods referred to in U.S. Service Mark Application S.N. 76/088,346 filed July 10, 2000.

**RESPONSE:** In lieu of identifying documents, Grizzly states that it has already produced thousands of documents responsive to this interrogatory, including documents bearing Bates Nos. GRIZC-00177-07937, and is producing a print-out of its website, GRIZC 09120-09157.

14. Identify all companies, firms, persons or other organizations that use the services and goods referred to in U.S. Service Mark Application S.N. 76/088,346 filed July 10, 2000 to which the alleged trademark GRIZZLY.COM is applied or has been applied.

**RESPONSE:** Grizzly objects to this Interrogatory as it is overly broad and unduly burdensome and seeks information relating to the names of customers that is not generally discoverable under the TTAB Rules. TBMP 419(3). Without waiving said objection, Grizzly states that a sampling of some of the better-known entities that purchase from Grizzly is found at GRIZC-04224.

15. Identify all companies, firms, persons or other organizations that sell the services and goods referred to in U.S. Service Mark Application S.N. 76/088,346 filed July 10, 2000 to which the alleged mark GRIZZLY.COM is applied or has been applied.

**RESPONSE:** Grizzly Industrial, Inc.

16. Identify all distributors of Applicant that handle, sell or otherwise deal with the services and goods referred to in U.S. Service Mark Application S.N. 76/088,346 filed July 10, 2000 which are sold in connection with the mark GRIZZLY.COM.

**RESPONSE:** No distributors outside of Grizzly Industrial, Inc.

17. Identify all persons expected to be called by Applicant to give testimony on its behalf in this proceeding and state with particularity the subject matter on which each person is expected to testify and the substance of his testimony.

**RESPONSE:** Grizzly objects to this interrogatory as seeking the identity of witnesses it intends to call and the evidence it intends to present, which the TTAB rules provide need not be done in advance of trial. TBMP 419(7).

18(a) Provide the date and describe the circumstances of Applicant's consideration, selection, adoption and first use of the GRIZZLY.COM mark.

(b) Identify each person having knowledge or information relating to Applicant's consideration, selection, adoption, or first use of Applicant's alleged mark, "GRIZZLY.COM".

**RESPONSE (a):** June 1999. The mark GRIZZLY.COM was selected for its relationship to the other GRIZZLY marks used by Grizzly and its connotation of toughness.

**RESPONSE (b):** Mr. Shiraz Balolia.

19. Identify the officers or managing agents of Applicant as of the date of first use of the "GRIZZLY.COM" mark and their immediate successors.

**RESPONSE:** Mr. Shiraz Balolia; no successors.

20(a) Identify Applicant's principal place of business.

(b) Describe in detail the nature of Applicant's business.

(c) State Applicant's total annual sales since the date of Applicant's first use of the "GRIZZLY.COM" mark.

**RESPONSE (a):** 1821 Valencia Street, Bellingham, Washington 98227.



**RESPONSE (b):** Grizzly is a national retail, mail order and internet company, which sells high quality woodworking and metalworking machinery. The details of the products sold by Grizzly can be found in Grizzly's catalogs bearing Bates Nos. GRIZC 00177-04693.

**RESPONSE (c):** To the extent this interrogatory seeks information that is proprietary and confidential, this information is produced in round numbers under separate cover pursuant to paragraph 4(b) of the protective order. TBMP 419(18).

21(a) Identify by common commercial name each product Applicant currently provides, previously provided or intends to provide in the United States under its alleged "GRIZZLY.COM" mark or any similar mark.

(b) Identify any other way in which Applicant uses Applicant's alleged mark "GRIZZLY.COM", not identified in response to interrogatory 21 (a).

(c) For each product identified in the answers to interrogatories 21 (a) and (b), state whether the use of the mark has continued to the present date or state the date upon which the use of the mark was discontinued or interrupted.

**RESPONSE (a):** Products are listed in Grizzly's annual catalogs and website. Grizzly has already produced thousands of documents responsive to this interrogatory, including documents bearing Bates Nos. GRIZC 00177-04693, and is providing a print-out of its website, GRIZC 09120-09157, which also lists the products.

**RESPONSE (b):** Grizzly uses the mark GRIZZLY.COM in advertisements, including, television and radio commercials, magazines, phone directories, bus signs, and billboards; the mark is also used on product nameplates, packaging, catalogs, brochures, card decks and on Grizzly's Internet website, and at trade shows.

**RESPONSE (c):** All use of the mark has continued to the present date.

22. With respect to each product identified in the answer to interrogatory 21, describe in detail the channels of trade for each of Applicant's goods, the customers and prospective

customers as well as the ultimate consumers for each of Applicant's goods and the retail price for each of Applicant's goods.

**RESPONSE:** The channels of trade for each of Grizzly's goods is determined by the nature of the goods. Thus, goods designed for use by woodworkers travel in channels of trade frequented by woodworkers, and are bought in response to catalogs directed to woodworkers and advertisements placed in magazines and other venues in which woodworkers buy goods. Similar channels of trade are followed by metal workers.

The classes of customers and prospective customers are primarily small and large cabinet shops, machine shops and industrial users. They may also include small home shop tool lovers, schools, and hospitals. A list of some of the better-known customers is found at GRIZC-04224. The names of Grizzly's customers are generally not discoverable. TBMP 419(3).

The ultimate consumers are woodworkers and metalworkers.

The retail price for each of Grizzly's goods may be found in Grizzly's catalogs bearing Bates Nos. GRIZC-00177-04693, which have previously been produced.

23. If Applicant is aware of any instances of confusion which have occurred between Petitioner's goods and Applicant's goods, identify the person or persons having knowledge of the confusion, and the date and place of confusion.

**RESPONSE:** Grizzly is not presently aware of any instances of confusion.

24. If Applicant is aware of any instances of confusion which have or may have occurred between Applicant's goods and any services or goods or any other person (other than Petitioner), identify the person or persons having knowledge of the confusion, and the date and place of the confusion.

**RESPONSE:** Grizzly is not presently aware of any instances of confusion.

25. If Applicant has ever received any complaints from distributors, salesmen, customers, or other persons involved in the marketing and distribution of Applicant's goods, related in any way to Applicant's goods using the "GRIZZLY.COM" mark, identify the person

or persons who made the complaint(s), and all persons having knowledge or information of the complaint(s).

**RESPONSE:** Grizzly is not presently aware of any.

26(a) Identify each person who is or has had any responsibility for the advertising and promotion of the goods sold by Applicant bearing Applicant's alleged mark, "GRIZZLY.COM" or similar terms or names, and as to each person so identified, state the period of time that person had such responsibility.

(b) Identify the types of advertising and promotion, and identify the media Applicant has used to advertise and promote goods bearing the alleged mark "GRIZZLY.COM", and identify the amount of money Applicant has spent for each type of advertising and promotion during each year since the introduction of such goods.

(c) Identify each publication or item of advertising or publicity material in which Applicant has advertised, described or promoted goods in the United States having or referring to the alleged mark "GRIZZLY.COM".

**RESPONSE (a):** Mr. Shiraz Balolia, 1983 to date.

**RESPONSE (b):** The types of advertising and promotion in which Grizzly has engaged and the media used include television, magazines, telephone directories, radio, billboards, nameplates, packaging, brochures, tradeshow, card decks, websites, bus signs, and catalogs.

The amount of money expended for advertising and promotion is confidential and will be divulged in round numbers under separate cover pursuant to paragraph 4(b) of the protective order. TBMP 419(18).

**RESPONSE (c):** Grizzly has already produced thousands of documents responsive to this interrogatory, including documents bearing Bates Nos. GRIZC-00177-07937 and will produce additional documents, in particular, document production numbers GRIZC 09120-09157.

27. Please list separately each state of the United States in which Applicant:

(a) Has advertised goods bearing the "GRIZZLY.COM" mark and state whether the goods are listed in trade catalogs, wholesale or retail, identifying such catalogs and the extent of sales made through each.

(b) Has distributors or dealers.

(c) Has made sales of the goods and the dates of first sales in the individual states concerned.

**RESPONSE (a):** Every state in the United States; the goods are listed in catalogs; in lieu of identifying the catalogs, Grizzly has already produced catalogs bearing Bates Nos. GRIZC-0177-04693. Grizzly objects to this Interrogatory as unduly burdensome and seeking information generally not discoverable under TTAB rules with respect to the extent of sales made through each catalog and in each state. TBMP 419(18).

**RESPONSE (b):** Grizzly does not have any distributors or dealers. Grizzly has distribution facilities in Bellingham, Washington; Springfield, Missouri; and Muncy, Pennsylvania.

**RESPONSE (c):** On information and belief, sales were made in every state in the United States in 1983.

28. Using the definition of "gross sales" as "sales before returns, excluding delivery charges, cash discounts and sales and excise taxes," state the number of goods sold and the Applicant's gross sales of all goods bearing the "GRIZZLY.COM" mark, in terms of:

(a) Each type of goods sold by Applicant; and

(b) Dollars per calendar or fiscal year for each type of goods.

**RESPONSE (a):**

Grizzly objects to this Interrogatory as overly broad and unduly burdensome and seeking information not required under TTAB rules. TBMP 419(18).

**RESPONSE (b):**

Grizzly objects to this Interrogatory as overly broad and unduly burdensome and seeking information not required under TTAB rules. TBMP 419(18).

29(a) Identify each person who Applicant has retained for purposes of this Opposition proceeding and each expert witness who Applicant has retained and intends to call to testify in this proceeding.

(b) For each person named in answer to interrogatory 29(a), identify the subject matter about which the person will testify or the area of expertise for which they have been retained.

(c) For each person named in answer to interrogatory 29(a), identify the person's qualifications, including educational background, experience in the area, and any papers or publications written by the person relating or referring to the subject matter for which they have been retained in this proceeding.

(d) For each person Applicant expects to call as an expert witness at trial, state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

**RESPONSE (a-d):**

Grizzly has not retained any expert witnesses in connection with this matter.

30. Identify each owner or each person having or having had any right to use the alleged mark "GRIZZLY.COM", and through, or under which Applicant claims any rights in such mark, and provide the date of first use of the "GRIZZLY.COM" mark by each owner or person identified.

**RESPONSE:** The date of first use by Grizzly Industrial, Inc. for the mark GRIZZLY.COM is at least as early as June 1999

31. Provide the date and describe the circumstances when Applicant first became aware of any of Petitioner's marks referred to in the Notice of Opposition.

**RESPONSE:** To the best of Grizzly's knowledge and recollection, Grizzly first became aware of Pucel's marks sometime in 1986. Grizzly does not recall the circumstances.

32. Identify all persons whom Applicant has licensed or granted authority to furnish goods under Applicant's alleged mark "GRIZZLY.COM" and identify all goods covered by each license.

**RESPONSE:** None.

33. Identify the persons who participated in compiling the information used to prepare Applicant's answers and the persons most knowledgeable on behalf of Applicant regarding the subject matter of the Interrogatory answers.

**RESPONSE:** Mr. Shiraz Balolia.

34. Identify the persons who participated in identifying and compiling the documents produced by Applicant in response to Petitioner's First Request for Documents and the persons most knowledgeable on behalf of Applicant regarding the subject matter of the documents produced.

**RESPONSE:** Mr. Shiraz Balolia.

Grizzly Industrial, Inc.

By:



Joseph F. Schmidt

Lisa C. Childs

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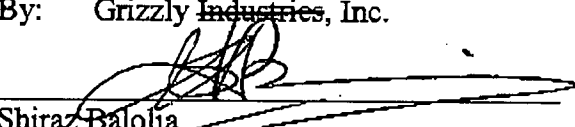
(312) 222-0818 (fax)

Attorneys for Applicant

Grizzly Industrial, Inc.

VERIFICATION

Having read GRIZZLY INDUSTRIAL INC.'S RESPONSE TO OPPOSER'S (PUCEL ENTERPRISES, INC.) FIRST SET OF INTERROGATORIES (Opposition No. 123,506), I declare under penalty of perjury that the statements therein, to the best of my knowledge, information and belief, are true and correct.


Date: 6/26/02By: <sup>Industrial,</sup> Grizzly Industries, Inc.  
Shiraz Balolia  
President

**CERTIFICATE OF SERVICE**

A copy of the above GRIZZLY INDUSTRIAL INC.'S RESPONSE TO OPPOSER'S (PUCEL ENTERPRISES, INC.) FIRST SET OF INTERROGATORIES (Opposition No. 123,506) was mailed this 28<sup>th</sup> day of June, 2002, by United States First Class

Mail, postage prepaid, addressed to:

Kenneth L. Mitchell  
Woodling, Krost and Rust  
9213 Chillicothe Road  
Kirtland, OH 44094

  
\_\_\_\_\_  
Attorney for Respondent